IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.444 OF 2004

Bhawani Indentors Pvt. Ltd. ... Petitioner.

V/s.

M/s. Kogta Import Export Pvt.Ltd. ... Respondent.

Mr. Rohit Shetty for the Petitioner.
Ms. S. Shrikrishna i/b. D.H. Law Associates for the Respondent.

CORAM : DR. D.Y. CHANDRACHUD,J.

20TH JUNE 2007.

P.C. :-

. It is an undisputed position before the Court that (i) Summary Suit 3556 of 1997 was initially instituted against a sole Defendant, ITC Global Holdings Pvt. Ltd; (ii) The Respondent to the Company Petition came to be impleaded as the second Defendant subsequently by way of an amendment to the plaint; (iii) The relief that was sought in the suit was only as against the First Defendant, ITC Global Holdings Pvt. Ltd. and not against the Respondent herein (the added Second Defendant to the Suit); (iv) The decree passed by this Court in the Summary Suit on 26th August 2003 was in terms of the prayer clause of the suit.

2. This position has not been fairly disputed before the Court by Counsel appearing on behalf of the Petitioner and is accepted by Counsel appearing on behalf of the Respondent as well.

3. In that view of the matter, it is apparent that the basis of the Company Petition for winding up, which is that there is a decree against the Respondent herein is flawed inasmuch as there is no decree in the Summary Suit as against the Respondent to this proceeding.

4. Counsel appearing on behalf of the Respondent has drawn the attention of the Court to the fact that the drawn up decree erroneously proceeds on the basis that the decree was passed aginst the Defendants to the Suit. Counsel states that the Respondent herein has moved the Prothonotary and Senior Master in terms of the Original Side Rules to correct the state of the record.

5. For the aforesaid reasons, it cannot be stated that there is a debt due and payable.

6. In the circumstances, the Company Petition is dismissed.